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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re the Application of )  
 )  
BEACON BROADCASTING CORPORATION ) File No. BPED-900905ML  
 )  
For a Construction Permit for a )  
New Noncommercial Educational FM )  
Station on Channel 207A at )  
Allentown, Pennsylvania )

To: The Chief, Mass Media Bureau

OPPOSITION TO AMENDMENT

Lehigh Valley Community Broadcasters Association  
(LVCBA), through its attorneys, hereby opposes acceptance of  
the amendment proffered on December 20, 1991 by Beacon Broad-  
casting Corporation (Beacon) in connection with its above-  
referenced application. In support thereof, the following is  
shown:

1. LVCBA has pending an application for a new public  
radio station at Allentown, Pennsylvania (FCC File No. BPED-  
891019MF), which is mutually exclusive with Beacon's applica-  
tion. LVCBA has filed a Petition to Deny that application.

2. Beacon's application appeared on a cutoff list  
(Report No. B-138, released October 15, 1991) establishing  
November 19, 1991 as the deadline for submission of amendments  
as of right. Beacon has neither requested leave to file its  
amendment nor proffered any justification for its acceptance by  
the Commission. On this ground alone, its amendment must be  
rejected.

93-37

3. Beacon's amendment must rejected in any event because Beacon has already had one opportunity to correct its defective application, and any further attempt to shore up that proposal through an additional amendment is expressly barred by the Commission's policy respecting the processing of AM and FM construction permit applications. In this regard, LVCBA hereby incorporates by reference its Petition to Deny Beacon's application and its Reply to Opposition to Petition to Deny filed simultaneously herewith. Copies of these pleadings are attached hereto for the Commission's convenience.

WHEREFORE, for the foregoing reasons, LVCBA respectfully urges the Commission to reject Beacon's amendment.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION

By: Malcolm G. Stevenson  
Malcolm G. Stevenson

SCHWARTZ, WOODS & MILLER  
Suite #300  
1350 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202)833-1700

Its Attorneys

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STAMP AND RETURN

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2. By letter dated May 10, 1991 (Reference: 8920-RPC), the Commission returned Beacon's application as unacceptable for filing due to prohibited contour overlap to Station WRDV(FM), Warminster, Pennsylvania, in violation of §73.509 of the rules. As the Commission informed Beacon in that letter,

. . . pursuant to the Commission's Public Notice entitled 'Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications'. . . the Commission indicated that it would provide one opportunity to reinstate applications nunc pro tunc where the original application was returned and where a relatively minor curative amendment was filed within 30 days of the date of the return of the application.

Beacon was directed to correct any and all defects in its application. On June 10, 1991, Beacon re-tendered its application. Beacon averred that the application, as amended, corrected the engineering defect that resulted in the return of the original application. However, Beacon's application, as amended, remains patently defective.

3. Attached hereto is an Engineering Statement prepared on behalf of LVCBA. As that Statement observes, Beacon's application is patently defective due to massive predicted interference to television Station WPVI, Channel 6, Philadelphia, Pennsylvania, contrary to §73.525 of the rules. In particular, the predicted interference area encompasses the entire community of license and a total of 207,251 persons, or more than 200,000 persons in excess of the number permitted under §73.525. In addition, Beacon's proposed transmitter site is plotted at a location at variance with the coordinates provided by Beacon at Exhibit VB-2(b) of the application.

Finally, Beacon's Exhibit VB-2(b), page 4, respecting Beacon's proposed directional antenna sets forth values which exceed the .135 kW directional antenna proposed by Beacon elsewhere in the application. Each of these defects, standing alone, warrants return of Beacon's application.

4. Beacon's gross understatement of areas and population affected appears to be based upon a fundamental misapplication of §73.525(e)(1)(vi) of the rules. The Commission's exhaustive deliberations culminating in its Memorandum Opinion and Order in BC Docket 20735, 58 RR 2d 629 (1985) (Memorandum Opinion and Order) consistently addressed the proper balance in determining whether and to what extent noncommercial educational (NCE) operations would be permitted incursions into the Grade B contours of TV Channel 6 stations; they never contemplated permitting an NCE applicant to avail itself of the "exceptional terrain" adjustment provision of §73.525(e)(1)(vi) in connection with the location of an NCE transmitter well within TV Channel 6 Grade B contours. Unlike the other "standard" adjustment provisions of §73.525(e), §73.525(e)(1)(vi) was adopted as a "non-standard" factor which might be used in exceptional circumstances. Memorandum Opinion and Order, supra at para. 47. The plain language of §73.525(e)(1)(vi) indicates that it is predicated upon the assumption that the NCE transmitter is located outside the Grade B contour of the TV Channel 6 facility. In particular, the provision seems clearly to be applied only in cases where a mountain intervenes between an NCE proposal and a TV Channel 6

"exceptional terrain" considerations of §73.525(e)((1)(vi) is inapposite. Acceptance of Beacon's proposal would mean that numerous NCE operations could propose to be located within TV Channel 6 Grade B contours with potentially disastrous consequences for those television operations.

5. Beacon's defective proposal was inadvertently accepted and must be dismissed. Moreover, the Commission's policies concerning the processing of AM and FM applications do not permit a second resubmission by Beacon of its application. The Commission's Public Notice respecting patently defective AM and FM applications (FCC 84-366, released August 2, 1991) in this regard clearly states that

Finally, we would also like to note that we have, on many occasions, granted reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days. In contested proceedings, the result of this procedure is that applications are accepted nunc pro tunc. We will continue to act favorably on such requests after an initial dismissal or return of an application as unacceptable for filing. This procedure is a reasonable accommodation to applicants who wish to participate in the comparative proceeding and may be unfamiliar with our application requirements. In the situations in which we have granted reconsideration in the first instance, the curative amendment has not unduly delayed the processing of other applications. In the future, we will, however, expect such applicants to completely review all portions of a returned or dismissed application. Thereafter, if the same application is returned or dismissed a second time, it will not be afforded nunc pro tunc reconsideration rights. Repeating a procedure whereby applications are re-accepted nunc pro tunc is obviously unfair to other applicants in a comparative proceeding who have prepared properly executed

applications. Furthermore, this process of repeatedly affording nunc pro tunc reconsideration rights leads to delay and tends to encourage the filing of incomplete and poorly prepared applications.

Under these circumstances, any attempt by Beacon to cure its blatantly defective application must be rejected by the Commission.

WHEREFORE, for the foregoing reasons, LVCBA respectfully urges that the Commission should dismiss or deny Beacon's application.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION

By: Malcolm G. Stevenson  
Malcolm G. Stevenson

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The Dupont Circle Building  
Suite 300  
1350 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Its Attorneys  
202-833-1700

ENGINEERING STATEMENT  
ON BEHALF OF  
LEHIGH VALLEY COMMUNITY BROADCASTERS ASSOCIATION  
APPLICANT FOR A NEW EDUCATIONAL FM STATION AT  
ALLENTOWN, PENNSYLVANIA

IN SUPPORT OF A PETITION TO DENY  
THE APPLICATION FOR CONSTRUCTION PERMIT  
OF BEACON BROADCASTING CORPORATION(FILE #BPED-900905ML)  
AT ALLENTOWN PENNSYLVANIA

CHARLES W. LOUGHERY  
741 CYBUS WAY  
SOUTHAMPTON, PA 18966



This Engineering Statement was prepared on behalf of Lehigh Valley Community Broadcasters Association, an applicant for construction permit for a new Educational FM station at Allentown, Pa, in support of a petition to deny the application of Beacon Broadcasting Corporation for a construction permit for a new Educational FM station at Allentown, Pa. Beacon Proposes operation on Channel 207 with an Effective Radiated Power of .135 Kilowatts at a Height above average terrain of 245 meters. The instant statement shows that the facility proposed will result in interference to the reception of channel 6 television station WPVI Philadelphia to a number of persons far in excess of that permitted under 73.525 of the Commissions rules.

In the Engineering portion of the Beacon application, Beacon determined that interference to WPVI would involve 171 persons. This result was reached only after a terrain study purporting to show that virtually all of the interference area is shadowed.

However, the Channel 6 protection rules (73.525) do not permit an adjustment in this case. To the extent that Beacon is may be relying on language contained in 73.525(e)(vi) which deals with widely varying terrain such as an "intervening mountain", that provision is inapplicable to the case at hand and may not be used by Beacon.

Beacon's proposed transmitter site is located within the WPVI Grade B contour.

Beacon at Exhibit VB-7B of its application depicts the interference area as being completely inside the WPVI Grade B contour. The supplemental showings envisioned under 73.525(e)(vi)

involve adjustments to predicted interference areas from proposals whose transmitter sites are located outside the Grade B contour of the Channel 6. In those cases the Commission may accept adjustments where the overlap of the Grade B contour is in an area where an intervening mountain would provide protection to Channel 6 by effectively blocking or attenuating the FM stations signal strength to the point where no interference would occur. However, such adjustments may not be applied in cases where the proposed FM transmitter is located inside the Channel 6 Grade B contour.

Therefore, the entire interference area of Beacon's proposal must be used when counting population since it lies entirely within the WPVI Grade B contour.

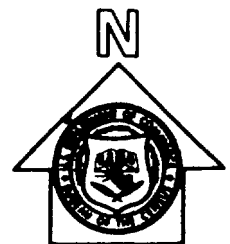
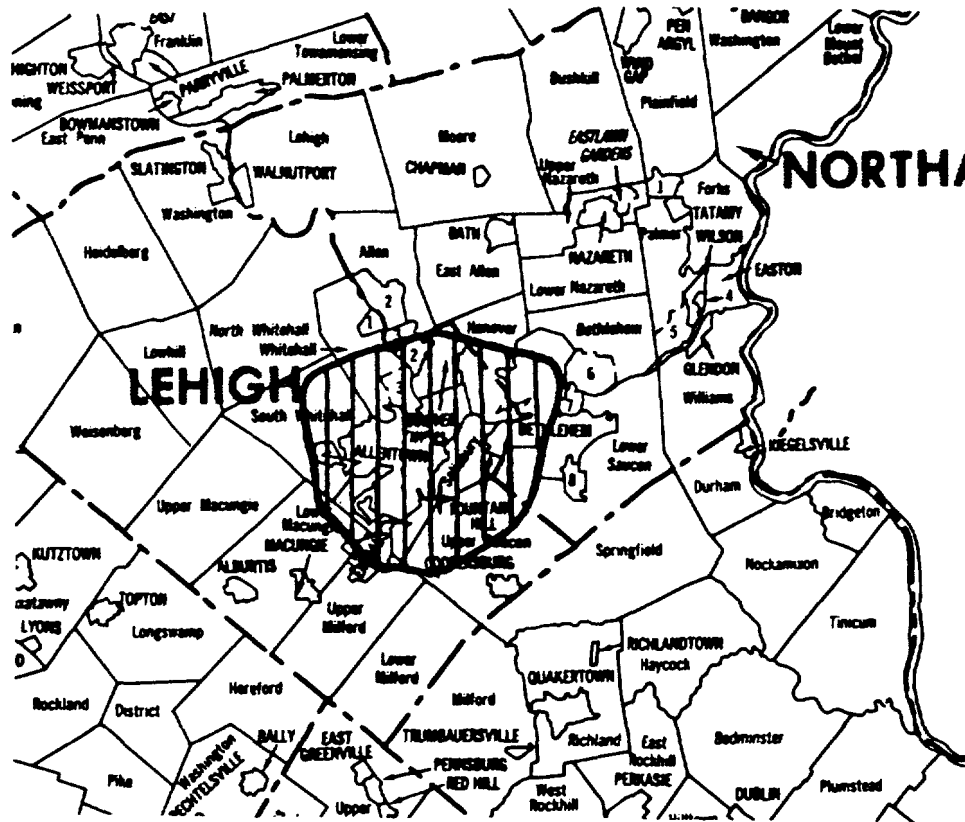
The entire Beacon interference area depicted in Exhibit VB-7B was transposed upon a portion of a census map for the State of Pennsylvania, and is included with this statement as Exhibit A. Population within Beacon's predicted interference area was determined per 73.525(e) using 1980 census data and found to be 207,251 persons, or 204,251 persons in excess of that permitted

information) shows values under the dBk and kW columns which exceed the .135kW (Max)Da proposed.

EXHIBIT A

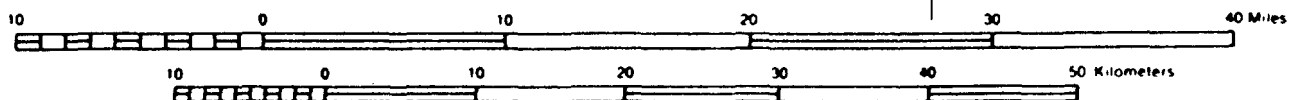
CH 6 INTERFERENCE AREA

PLOTTED ON A PORTION OF THE PENNSYLVANIA CENSUS MAP



SCALE 1: 500,000

1 INCH REPRESENTS APPROXIMATELY 8 MILES



Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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BEACON BROADCASTING CORPORATION	)	File No. BPED-900905ML
	)	
For a Construction Permit for a	)	
New Noncommercial Educational FM	)	
Station on Channel 207A at	)	
Allentown, Pennsylvania	)	

To: The Chief, Mass Media Bureau

**REPLY TO OPPOSITION TO PETITION TO DENY**

The Lehigh Valley Community Broadcasters Association (LVCBA), through its attorneys, hereby files its reply to the "Opposition to Petition to Deny" (Opposition) filed by Beacon Broadcasting Corporation (Beacon) in connection with the above-referenced application by Beacon. In support thereof the following is shown:

1. Beacon's claim that its proposed operation complies with the requirements of the rules respecting educational FM interference to TV Channel 6 is wholly without merit. Attached hereto is an engineering analysis by Lehigh's consulting engineer which demonstrates that Beacon's own technical analysis is blatantly defective. In particular, Beacon erroneously applies §§73.313(e) and 73.525(e) in calculating the pertinent FM and TV contours and provides no hard data to support its claims that terrain shadowing reduces interference to TV Channel 6 to an acceptable level. Beacon relies without support upon Channel 3 field strength measurements allegedly taken in the context of a hoary cable television proceeding of

some 20 years ago. Beacon's casual reliance upon an old cable television proceeding which apparently did not even entail TV Channel 6 measurements is totally inapposite. Notably, Beacon makes no use of the factors enumerated in §73.525 which do permit some adjustment of the proposed FM contour. Under all of these circumstances, the Commission may not accept Beacon's claims respecting TV Channel 6 field strength in the pertinent coverage areas.

2. Beacon candidly concedes that its application, as amended on June 10, 1991 did not cure all of the defects in its proposal as required by the Mass Media Bureau in its letter to Beacon of May 10, 1991. That letter specifically explained to Beacon that its curative amendment would have to cure not only the defect which prompted dismissal of the application but "any other deficiencies" as well. In this regard, Beacon's reliance upon the Commission's commercial FM application processing standards (Opposition, p. 3) is inapplicable to this application, which is subject to the Commission's distinct processing rules governing noncommercial educational applications.<sup>1/</sup> The latter rules provide for "one bite at the apple", and Beacon may not be afforded two.<sup>2/</sup>

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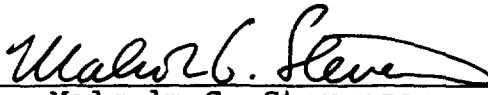
<sup>1/</sup> In this regard, the FM Branch letter to Trans Caribbean Broadcasting Company, cited by Beacon, is inapplicable. That case concerns a commercial FM proposal which is subject to an entirely different processing standard.

<sup>2/</sup> Simultaneously herewith, LVCBA is filing an opposition to that amendment.

WHEREFORE, for the foregoing reasons and for the reasons set forth in its Petition to Deny, LVCBA respectfully urges that the Commission reject Beacon's application.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION

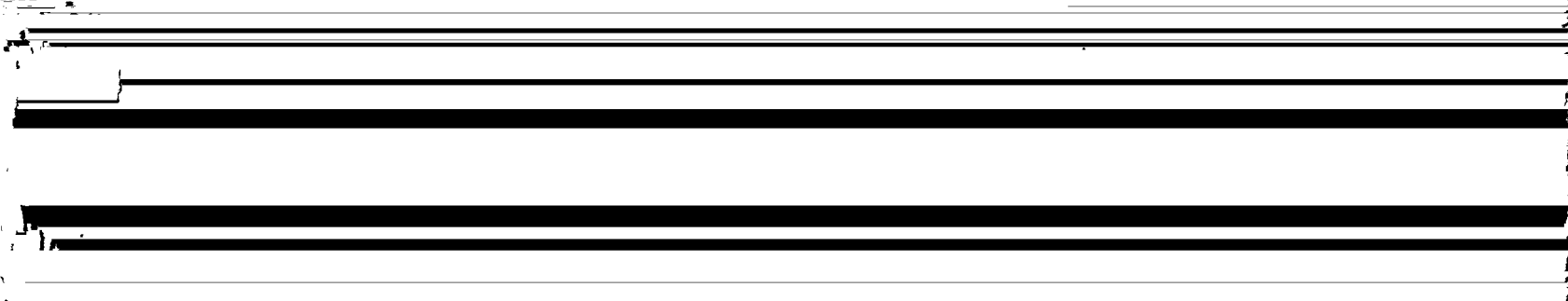
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ENGINEERING STATEMENT  
ON BEHALF OF  
LEHIGH VALLEY COMMUNITY BROADCASTERS ASSOCIATION  
APPLICANT FOR A NEW EDUCATIONAL FM STATION AT  
ALLENTOWN, PENNSYLVANIA

IN SUPPORT OF A REPLY TO OPPOSITION TO PETITION TO DENY  
FILED BY  
BEACON BROADCASTING CORPORATION (FILE #BPED-900905ML)  
AT ALLENTOWN PENNSYLVANIA

CHARLES W. LOUGHERY  
741 CYBUS WAY





DECLARATION

I, Charles W. Loughery, do declare under penalty of perjury  
that I have prepared the attached Engineering statement on behalf  
of Lehigh Valley Community Broadcasting Association, a division of

## **ENGINEERING STATEMENT**

This Engineering Statement was prepared on behalf of Lehigh Valley Community Broadcasters Association, an applicant for construction permit for a new Educational FM station at Allentown, Pennsylvania, and is prepared in reply to an opposition to a petition to deny the application of Beacon Broadcasting Corporation for a construction permit for a new Educational FM station at Allentown, Pennsylvania. Beacon proposes operation on Channel 207 with an Effective Radiated Power of .135 Kilowatts at a height above average terrain of 245 meters.

In the petition to deny it was demonstrated that the application of Beacon does not conform to the rigid standards of 73.525 (TV Channel 6 Protection). The instant statement shows that the arguments made by Beacon in its opposition still fail to demonstrate compliance with 73.525.

Beacon in both its application and its opposition continues to rely on the argument that mere terrain blockage alone is sufficient to subtract such blocked or shadowed areas from the calculated interference area. It appears to argue that Section 73.313 of the rules may be used to adjust the TV Channel 6 contour. However, that section applies to FM stations only.

It also appears that Beacon is trying to adjust the TV Channel 6 contours based on a reference to the irrelevant issue of CATV carriage and related arguments from a 1970's case involving the (now stricken) Must Carry Rule. Beacon does not show how this case is relevant to the instant case.

Before adjusting its proposed FM contour Beacon would first have to demonstrate that the interference area does not receive a Grade B signal (47 DBu) or stronger from WPVI. Nowhere in its application or in the opposition does Beacon make such a showing. In fact Beacon, in Exhibit VB-7B of its application, clearly shows the interference area as being completely inside the Grade B contour of WPVI. Nowhere and at no time has Beacon attempted to show any adjustment to the Grade B contour. Further, no adjustment of the Grade B contour in the manner proposed by Beacon is permitted under 73.525, which does permit some adjustment to the FM contour based upon factors not used by Beacon.

Beacon makes reference to measurements made in the 1970's of the signal of KYW (Channel 3) and attempts to correlate the measurements to Channel 6. Beacon appears to argue that the Channel 6 signal strength in the pertinent area is less than 47 DBu but again fails to show what the signal strength is and how Beacon arrived at such a value. In any event, Beacon fails to correlate them to the instant situation of protection to Channel 6. Moreover, even if such a correlation was made, no adjustment to the Grade B contour is permitted under 73.525 based upon the actual signal strength of Channel 6.

On the other hand, since 73.525 does not permit an applicant for an educational FM station to adjust the TV Channel 6 Grade B contour then it must by definition permit the applicant

to make adjustments to the FM contours. Beacon has pointed this out in its reference to 73.525(e)(1)(iv) which refers the applicant to 73.313 in predicting the distance to FM contours.

73.313(e) provides some additional guidance to the applicant in the application of 73.525(e)(1)(vi) which permits adjustments to FM contours based on widely varying terrain when accompanied by a

so it would appear that any variation in terrain would not shadow any of the interference area from Beacon's proposed FM station.

It should be noted that if the methodology of Beacon in this matter were permitted, hundreds of educational FM proposals could be filed and presumably granted, which merely show terrain shadowing or blockage to circumvent §73.525. In this regard, this office has been approached in the recent past by prospective educational FM applicants wishing to file applications for new facilities in areas where Channel 6 interference would occur. In one case it was determined that, without considering §73.525, a facility operating on 88.1 MHz with an ERP of 5 kilowatts and a HAAT of 52 meters could be constructed some 38 miles from a Channel 6 television station (within the Grade B contour). After applying §73.525, it was determined that the same facility would cause interference to many thousands of people; in fact, reducing power to 100 watts and proposing all vertical polarization still would have resulted in interference to more than 3000 people. However, like Beacon's proposal, the area was completely shadowed by large hills from a "line of sight" signal from Channel 6; on the other hand, again like Beacon, the FM antenna was not shadowed from the interference area.

In conclusion, Beacon has failed to properly apply the procedures of 73.525 by attempting to adjust the Channel 6 Grade B contour using an irrelevant CATV Must Carry case and by

and not the FM signal. Beacon has failed to supply any calcula-


~~tions which would show the effect of such a deviation on the signal~~

**CERTIFICATE OF SERVICE**

I, Artie King, Secretary in the firm of Schwartz, Woods & Miller, certify that I have on this 13th day of January, 1992, sent by First Class United States mail, postage prepaid, copies of the foregoing **REPLY TO OPPOSITION TO PETITION TO DENY** to the following:

Dennis Williams \*  
Mass Media Bureau, Room 332  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Jeffrey D. Southmayd, Esquire  
Southmayd Simpson & Miller  
1233-20th Street, NW  
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\_\_\_\_\_  
Artie King

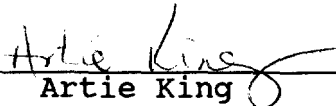
\* By Hand

**CERTIFICATE OF SERVICE**

I, Artie King, Secretary in the firm of Schwartz, Woods & Miller, certify that I have on this 13th day of January, 1992, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO AMENDMENT** to the following:

Dennis Williams \*  
Mass Media Bureau, Room 332  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

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Artie King

\* By Hand